

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court		District of Massachusetts	
Name (under which you were convicted): John Willis		Docket or Case No.: 93950-038	
Place of Confinement: Federal Correctional Institution - Danbury		Prisoner No.: 93950-038	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) v. John Willis	

FILED
IN CLERK'S OFFICE
JUN 20 2016

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: United States District Court for the District of Massachusetts
Boston Division

(b) Criminal docket or case number (if you know): 1:11-cr-10212-JLT

2. (a) Date of the judgment of conviction (if you know): March 13, 2013

(b) Date of sentencing: August 15, 2013

3. Length of sentence: 240 months incarceration

4. Nature of crime (all counts):
Conspiracy to commit money laundering in violation of 18 USC § 1956
Conspiracy to distribute oxycodone in violation of 21 USC § 846

5. (a) What was your plea? (Check one)

(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? Willis plead guilty to both counts of the Second Superseding Indictment

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐

Not Applicable

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7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒

8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: United States Court of Appeals for the First Circuit

(b) Docket or case number (if you know): 13-2102

(c) Result: Affirmed

(d) Date of result (if you know): April 7, 2014

(e) Citation to the case (if you know): Unknown

(f) Grounds raised: Whether the sentencing judge committed procedural error in failing to consider essential factors required by 18 USC § 3553(a) and to adequately explain the sentence.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): Not Applicable

(2) Result: Not Applicable

(3) Date of result (if you know): Not Applicable

(4) Citation to the case (if you know): Not Applicable

(5) Grounds raised: Not Applicable

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Not Applicable

(2) Docket or case number (if you know): Not Applicable

(3) Date of filing (if you know): Not Applicable

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(4) Nature of the proceeding: _____ Not Applicable

(5) Grounds raised: _____ Not Applicable

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ Not Applicable

(7) Result: _____ Not Applicable

(8) Date of result (if you know): _____ Not Applicable

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____ Not Applicable

(2) Docket or case number (if you know): _____ Not Applicable

(3) Date of filing (if you know): _____ Not Applicable

(4) Nature of the proceeding: _____ Not Applicable

(5) Grounds raised: _____ Not Applicable

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ Not Applicable

(7) Result: _____ Not Applicable

(8) Date of result (if you know): _____ Not Applicable

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐ Not Applicable

(2) Second petition: Yes ☐ No ☐ Not Applicable

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(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: Not Applicable

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: See Attachment

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Attachment

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Supreme Court and First Circuit precedent foreclosed the raising of this issue and therefore any procedural default should be excused.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ Not Applicable

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: Not Applicable

Name and location of the court where the motion or petition was filed: Not Applicable

Attachment to John Willis Motion Under 28 USC § 2255

Ground One

The Movant, John Willis, was found to be a career offender, using the Residual Clause of the United States Sentencing Guidelines (USSG).

Supporting Facts

On June 26, 2015, the United States Supreme Court held the Residual Clause of the Armed Career Criminal Act (ACCA) to be unconstitutionally vague. See Johnson vs United States, 135 S Ct 2551, ____ (2015). The Supreme Court further held that the holding in Johnson is retroactive on collateral review. See Welch vs United States, 136 S Ct 1257, 1268 (2016).

In the case at bar, Willis was found to be a career criminal. One of the predicates used to qualify Willis as a career criminal was found by way of the Residual Clause in the USSG regarding Career Offenders, which is the same as that found in the ACCA.

The First Circuit has held that Johnson is applicable to the USSG. The court has yet to rule on whether Johnson is applicable to Second or Successive Motions, but this Motion is the first Motion under 28 USC § 2255 filed by Willis.

The Government is going to argue that Willis can't show prejudice, but all that this Court needs to do is look at the Sentencing Transcripts.

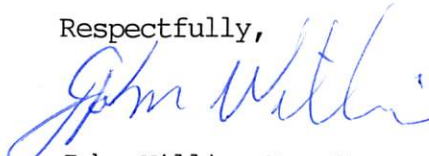
AUSA Moran relied on the career offender designation as a way to convince this Honorable Court to sentence Willis to more than twenty years. This was one of AUSA Moran's main arguments for such a severe sentence.

Further, Willis can show prejudice simply by the fact that the increase in the Criminal History Category alone has had the effect of increasing his security points within the scoring system used in the Federal Bureau of Prisons, thus increasing the security level of where Willis will serve his incarceration, and interfering with Willis's Fifth Amendment Due Process Liberty Interest Rights.

It must be noted that the Sixth Circuit has stated for the record that the Residual Clause of the ACCA and the Residual Clause of the Career Offender provisions of the USSG read the same and therefore must be treated the same for these purposes. See United States vs Binford.

Lastly, if this Court was to GRANT Willis a de novo resentencing, not only would the Criminal History Category scoring be reduced, but USSG Amendment 782, "All Drugs Minus Two" would also be available for the Court's final determination.

Respectfully,



John Willis, Pro Se

Docket or case number (if you know): Not Applicable

Date of the court's decision: Not Applicable

Result (attach a copy of the court's opinion or order, if available): Not Applicable

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ Not Applicable

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ Not Applicable

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ Not Applicable

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Not Applicable

Docket or case number (if you know): Not Applicable

Date of the court's decision: Not Applicable

Result (attach a copy of the court's opinion or order, if available): Not Applicable

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Not Applicable

Supreme Court and First Circuit precedent foreclosed the viability of this issue and any procedural default should be excused.

Not Applicable
GROUND TWO: Not Applicable

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Not Applicable

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Not Applicable

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them: The single issue raised in this Motion was never raised in any other proceedings due to the fact that Supreme Court and First Circuit precedent foreclosed the viability of raising the issue.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. Not Applicable

15. Give the name and address, if known, of each attorney who represented you in the following

~~stages of the judgment you are challenging.~~ Jeffrey A. Denner & Associates, P.C.

(a) At preliminary hearing: Four Longfellow Place, 35th Floor, Boston, MA 02114

(b) At arraignment and plea: See Above

(c) At trial: See Above

(d) At sentencing: See Above

(e) On appeal: See Above

(f) In any post-conviction proceeding: Not Applicable

(g) On appeal from any ruling against you in a post-conviction proceeding: Not Applicable

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: Not Applicable

(b) Give the date the other sentence was imposed: Not Applicable

(c) Give the length of the other sentence: Not Applicable

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐ Not Applicable

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.* This Motion is timely. The Supreme Court's holding in Johnson was issued on June 26, 2015. After Johnson was held to be retro-active by the Supreme Court in Welch, Motions must be filed within one year of the filing date of the Johnson decision. Therefore, this Motion is timely filed through the prison legal mail system filing rule.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: Appointment of Counsel
and a de novo resentencing.

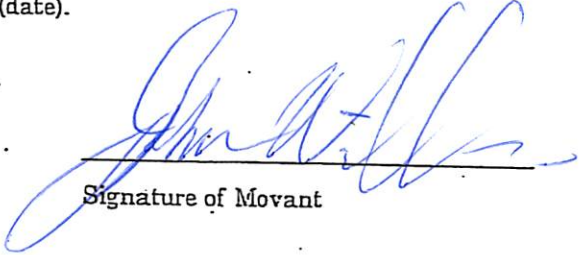
or any other relief to which movant may be entitled.

Not Applicable

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on June
, 2016. (month, date, year).

Executed (signed) on June 14, 2016 (date).


Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not
signing this motion. Not Applicable

IN FORMA PAUPERIS DECLARATION.

United States District Court for the District of Massachusetts

[Insert appropriate court]
